

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

Shannon Miller, Jen Banford,  
and Annette Wiles,

Plaintiffs,

v.

The Board of Regents of the  
University of Minnesota,

Defendant.

Case No. 15-cv-03740 (RHK/LIB)

**JOINT RULE 26(f) REPORT**

Counsel identified below conferred as required by Fed. R. Civ. P. 26(f) and the Local Rules, on December 21, 2015 and January 14, 2016 and prepared the following Report.

The initial pretrial conference required under Fed. R. Civ. P. 16 and LR 16.2 is scheduled for **January 25, 2016 at 1:30 p.m.** before the United States Magistrate Judge **Leo I. Brisbois**, in **Courtroom No. 3**, Gerald W. Heaney Federal Building and U.S. Courthouse, 515 West First Street, Duluth, Minnesota. The parties **do not** request that the pretrial be held by telephone.

**(a) Description of the Case.**

**(1) Concise factual summary of plaintiff's claims:** See Plaintiffs' Statement of the Case filed pursuant to the December 18, 2015 Amended Pretrial Conference Notice and Order (ECF Doc. 19) ¶ 3.

(2) **Concise factual summary of defendant's claims/defenses:** See Defendant's Statement of the Case filed pursuant to the December 18, 2015 Amended Pretrial Conference Notice and Order (ECF Doc. 19) ¶ 3.

(3) **Statement of jurisdiction (including statutory citations):** This Court has original jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1343(a) because this is an action to recover damages or secure equitable or other relief under Acts of Congress providing for the protection of civil rights, including Title VII of the Civil Rights Act, 42 U.S.C. § 2000e, *et seq.*, and further is a civil action arising under federal law, including Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.* Plaintiffs contend that this Court has supplemental jurisdiction over Plaintiffs' remaining claims pursuant to 28 U.S.C. § 1367(a). Defendant denies that this Court has supplemental jurisdiction over Plaintiffs' state law claims.

(4) **Summary of factual stipulations or agreements:** N/A

(5) **Statement of whether a jury trial has been timely demanded by any party:** Plaintiffs timely demanded a jury trial.

(6) The parties **have not** agreed to resolve the matter under the Rules of Procedure for Expedited Trials of the United States District Court, District of Minnesota.

(b) **Pleadings.**

All process has been served, and all pleadings filed. Neither party has a present intention to amend pleadings or add additional parties to the action.

(c) **Fact Discovery.**

The parties do not agree on all of the fact discovery deadlines and limitations that the Court should establish. The parties' joint recommendations are set forth below, and where they disagree, Plaintiffs and the University's respective positions are indicated:

(1) The parties must make their initial disclosures under Fed. R. Civ. P. 26(a)(1) on or before **March 1, 2016**.

(2) The parties must complete any physical or mental examinations under Fed. R. Civ. P. 35 by **November 1, 2016**.

(3) The parties must commence fact discovery procedures in time to be completed by on [**Plaintiffs: November 1, 2016; University: February 1, 2017**].

(4) The parties propose that the Court limit the use and numbers of discovery procedures as follows:

(A) Interrogatories: **No more than 10 interrogatories per Plaintiff and no more than 20 collectively by Plaintiffs (50 total), and (b) no more than 50 interrogatories for the University;**

(B) Document requests: No more than [**Plaintiffs: 60; University: 30**];

(C) Factual depositions: No more than [**Plaintiffs: 25; University: 15**];

(D) Requests for admissions: (a) **no more than 10 requests for admission per Plaintiff and no more than 20 collectively by Plaintiffs (50 total), and (b) no more than 50 requests for admission for the University;**

(E) Rule 35 medical examinations: **One** (based on current pleadings and information provided by Plaintiffs' counsel to the University); and

(F) Other: N/A

(d) **Expert Discovery.**

(1) The parties anticipate that **they will** require expert witnesses at the time of trial.

(A) The plaintiffs anticipate calling four to six experts in the fields of medicine, the requirements under federal law for gender equity in intercollegiate athletics, and plaintiffs' economic losses.

(B) The defendant anticipates calling rebuttal experts for each of the expert witnesses called by plaintiffs.

(2) The parties propose that the Court establish the following plan for expert discovery:

(A) **Initial experts.**

(i) The identity of any expert who may testify at trial regarding issues on which the party has the burden of persuasion must be disclosed on or before **[Plaintiffs: September 1, 2016; University: January 1, 2017]**.

(ii) The initial expert written report completed in accordance with Fed. R. Civ. P. 26(a)(2)(B) must be served on or before **[Plaintiffs: November 1, 2016; University: March 1, 2017]**.

**(B) Rebuttal experts.**

(i) The identity of any experts who may testify in rebuttal to any initial expert must be disclosed on or before

**[Plaintiffs: October 1, 2016; University: February 1, 2017].**

(ii) Any rebuttal expert's written report completed in accordance with Fed. R. Civ. P. 26(a)(2)(B) must be served on or before

**[Plaintiffs: December 1, 2016; University: April 1, 2017].**

(3) All discovery (**whether fact or expert**) must be completed by **[Plaintiffs: January 15, 2017; University: May 1, 2017].**

**(e) Other Discovery Issues.**

(1) **Protective Order.** The parties have discussed whether they believe that a protective order is necessary to govern discovery and jointly submit a Stipulation for Protective Order.

(2) **Discovery of Electronically Stored Information.** The parties have discussed disclosure, discovery, and preservation of electronically stored information, including the form in which it should be produced. The parties intend to submit a written stipulation and proposed order regarding the parties' ESI Protocol for the Production of Data.

(3) **Claims of Privilege or Protection.** The parties have discussed issues regarding the protection of information by a privilege or the work-product doctrine, as required by Fed. R. Civ. P. 26(f)(3)(D), including whether the parties agree to a

procedure to assert these claims after production or have any other agreements under Fed.

R. Evidence 502. The parties have requested that the Court include the following agreement in the protective order:

Inadvertent production of any Discovery Material shall be without prejudice to any claim that such Discovery Material is privileged or protected from discovery as work product or by reason of any other applicable privilege, including without limitation the attorney-client privilege, and no party shall be held to have waived any rights by such inadvertent production. If the claim of inadvertent production is made pursuant to this paragraph with respect to any Discovery Material then in the custody of another party, such other party shall promptly return to the claiming party or person that Discovery Material as to which the claim of inadvertent production has been made and all copies thereof, and the party returning such Discovery Material shall not use the information with respect to which a claim of inadvertent production has been made for any purpose, except by motion to the Court to compel production of the documents or information claimed to be privileged. The term "Discovery Material" as used herein shall include any document, deposition testimony, electronic data, interrogatory response, response to requests for admissions, response to requests for production or other information disclosed or produced by or on behalf of a party (or any of its attorneys or other agents), or by or on behalf of a non-party (or any of its attorneys or other agents) in this Action.

**(4) The parties:**

agree that a party should be required to request an informal conference with the Court before filing a discovery motion;

agree that a party should not be required to request an informal conference with the Court before filing a discovery motion; or

do not agree whether a party should be required to request an informal conference with the Court before filing a discovery motion.

**(f) Proposed Motion Schedule.**

The parties propose the following deadlines for filing motions:

(1) Motions seeking to join other parties must be filed and served by **[Plaintiffs: September 1, 2016; University: May 1, 2016.]**

(2) Motions seeking to amend the pleadings must be filed and served by **[Plaintiffs: September 1, 2016; University: May 1, 2016.]**

(3) All other non-dispositive motions must be filed, served and heard on or before **[Plaintiffs: March 1, 2017; University: June 1, 2017].**

(4) All dispositive motions must be filed, served, and heard by **[Plaintiffs: April 1, 2017; University: July 1, 2017].**

**(g) Trial-Ready Date.**

(1) The parties agree that the case will be ready for trial on or after **[Plaintiffs: May 1, 2017; University: October 1, 2017].**

(2) The parties propose that the final pretrial conference be held on or before **[Plaintiffs: February 1, 2017; University September 1, 2017].**

**(h) Insurance Carriers/Indemnitors.**

The University is self-insured through RUMINCO (Regents of the University of Minnesota Insurance Company), its captive insurer.

**(i) Settlement.**

(1) The parties will discuss settlement before the initial pretrial conference, by Plaintiffs making a written demand for settlement and defendant making a written response/offer to Plaintiffs' demand.

(2) The parties propose that a settlement conference be scheduled to take place after the hearing on dispositive motions and before the trial-ready date.

(3) The parties have discussed whether alternative dispute resolution will be helpful to the resolution of this case and recommend the following: settlement conference with the Court.

**(j) Trial by Magistrate Judge.**

The parties **have not** agreed to consent to jurisdiction by the Magistrate Judge under 28 U.S.C. § 636(c).

Dated: January 20, 2016

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Dated: January 20, 2016

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